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HELLER EHRMAN WHITE & McAULIFFE

ATTORNEYS

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

333 BURN STREET
SAN FRANCISCO
CALIFORNIA 94104-2878
FACSIMILE: (415) 772-6269
TELEPHONE: (415) 772-6000

January 7, 1998

ANCHORAGE
LOS ANGELES
PALO ALTO
PORTLAND
SEATTLE
TACOMA

BARRY S. LEVIN
(415) 772-6646

12588-0007

Darita Yocom, Esq.
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

Steve Baer, Esq.
United States Department of Justice
Environmental Protection Division
1425 New York Avenue, N.W.
Room 13046
Washington, D.C. 20005

Re: McCormick & Baxter Creosoting Company, Inc.

Dear Ms. Yocom and Mr. Baer:

For your information, enclosed is a copy of a letter recently mailed to Margarita Padilla and Larry Edelman.

Very truly yours,

Barry S. Levin
Barry S. Levin *Ch*

Enclosure

USEPA SF



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HELLER EHRMAN WHITE & MAULIFFE

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January 5, 1998

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Via Federal Express

Margarita Padilla
California Department of Justice
2101 Webster St., 12th Floor
Oakland, CA 94612

Larry Edelman
Oregon Department of Justice
1515 S.W. 5th Avenue, Suite 410
Portland, Oregon 97210

Re: McCormick & Baxter Settlements

Dear Ms. Padilla and Mr. Edelman:

As you know, McCormick & Baxter has recently concluded settlements with three carriers in connection with its claims in the suit captioned St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co., et al. We recently received a request from Margarita Padilla, on behalf of the State of California Department of Toxic Substances Control ("DTSC"), for an accounting of the settlement amounts, as well as a request that funds be disbursed, per the terms of McCormick & Baxter's Second Amended Plan of Reorganization, pursuant to that accounting. The purpose of this letter is to provide an accounting to each of you, assure that there are no objections thereto, and verify instructions for where each agency wants the funds to be paid.

Accompanying this letter are the settlement agreements entered into with Consolidated American, American Star, and Continental Insurance Co. As you know, as

Margarita Padilla
California Department of Justice
Larry Edelman
Oregon Department of Justice
January 5, 1999
Page 2

HELLER EHRMAN WHITE & McAULIFFE

ATTORNEYS

to each carrier, there are separate settlement agreements with both McCormick & Baxter and with Charles R. McCormick III, individually. Copies of both sets of agreements are provided. Please note that the agreements are confidential, should be treated as such, and should be disclosed solely within your relevant agencies on a need-to-know basis. If you do not agree to so treat the agreements, please return them to me by return mail.

This letter, together with the attached spreadsheet ("Spreadsheet"), provides an accounting of the funds received to date, with explanations.

Settlements With Consolidated American and American Star.

A. Amounts Payable to McCormick & Baxter.

With respect to the amounts payable to McCormick & Baxter by Consolidated American and American Star (a total of \$1,910,000), the following amounts have been deducted (see Sheet 1 of the Spreadsheet):

1. First, pursuant to the fee agreement between Heller Ehrman and McCormick & Baxter dated October 26, 1989 and approved by the Bankruptcy Court on October 31, 1989 (a copy of which is also enclosed) (the "Fee Agreement"), Heller Ehrman is entitled to "\$160,000 off the top of the award to compensate for its pre-petition insurance litigation fees and costs." (emphasis in original.) (See Fee Agreement at page 2, ¶4). (Spreadsheet, line 5)

2. Second, from the remaining amount (\$1,750,000), Heller Ehrman is entitled to 20% of the recovery as its fee (for a total of \$350,000). (See Fee Agreement at page 2, ¶5.) (Spreadsheet, line 7)

3. Third, from the remaining amount (\$1,400,000), Heller Ehrman is entitled to payment of 100% of the unreimbursed costs incurred in the insurance litigation. From July, 1991, through December 3, 1997, the amount of such unreimbursed costs was \$276,272. (Spreadsheet, line 8) We would be happy to provide an itemized listing of all such costs. Deducting this amount leaves a total of \$1,123,728 (Spreadsheet, line 9).

Margarita Padilla
California Department of Justice
Larry Edelman
Oregon Department of Justice
January 5, 1999
Page 3

HELLER EHRLMAN WHITE & McAULIFFE

ATTORNEYS

4. In anticipation of significant additional costs from December 3, 1997 up to and through trial, including significant expert witness fees, Heller Ehrman proposes to retain in its trust account, to fulfill the cost obligation of the Fee Agreement, a total of \$500,000, to be used solely for such costs. In the event such additional costs are less than this amount, the amount remaining after payment of such costs would then be disbursed to the two relevant states, as discussed below, without any further reduction for fees. We propose that \$300,000 be held back from the Consolidated American/ American Star settlements. (Spreadsheet, line 10)

5. Finally, there is an issue with respect to payment of litigation costs by McCormick & Baxter during the period from November, 1990 (after the Bankruptcy Plan) through June, 1991. The total costs paid by McCormick & Baxter during that period was \$118,251. The Second Amended Plan of Reorganization, at ¶1.19, defines "Insurance Proceeds" to mean:

"all proceeds, payments or recoveries, after payment and satisfaction of all attorneys fees and costs, received at any time by the Reorganized Company by reason of any judgment, settlement or compromise of any claim asserted in the litigation captioned St. Paul Fire & Marine Insurance Co., Inc. et. al. v. McCormick & Baxter Creosoting Company. . . ."

The Plan provides for disbursing to each state a percentage of the Insurance Proceeds. And because Insurance Proceeds, by definition, does not include costs, there is an issue as to how this \$118,251 should be disbursed. Consequently, at this time, this amount will be held in Heller Ehrman's trust account pending evaluation of this issue. . (Spreadsheet, line 11)

*how did RP
+ time
Heller's
expenses*

6. In view of the above, the total amount available for distribution to the two states from the Consolidated American/American Star settlements is \$705,476. (Spreadsheet, line 13)

B. Amounts Payable to Charles R. McCormick III.

As has been discussed with you, these two insurance companies insisted, as a condition to settlement with McCormick & Baxter, that Charles R. McCormick III

Margarita Padilla
California Department of Justice
Larry Edelman
Oregon Department of Justice
January 5, 199
Page 4

HELLER EHRMAN WHITE & McAULIFFE

ATTORNEYS

execute an individual release of any claims that he might have to coverage. Given the incomplete state of his discussions with you, Mr. McCormick was not prepared to give such a release without some arrangement to address his potential future need for a defense of any governmental claims against him. Therefore, both carriers also entered into separate settlement agreements with Mr. McCormick.

With respect to the amounts payable by Consolidated American/American Star to Charles R. McCormick III, solely to pay for the cost of defending any Claims against him as an individual, as defined in the settlement agreements, the agreements provide for payment of a total of \$215,000 (Spreadsheet, line 4), of which 20% (or \$43,000) is paid to Heller Ehrman (Spreadsheet, line 7), pursuant to the Fee Agreement (at page 2, ¶5). The \$172,000 remainder will be disbursed into a trust account to be held for use as outlined in the settlement agreements (Spreadsheet, line 12).

Settlement with Continental Insurance Co.

A. Amounts Payable to McCormick & Baxter.

As to the \$2,500,000 settlement with Continental Insurance Co. (Spreadsheet, line 20), see Spreadsheet sheet 2. The portion payable to the company is \$2,250,000. (Spreadsheet, line 20).

The only reductions from this amount prior to distribution to the agencies are: (a) Heller Ehrman's fee share is 20% of \$2,250,000 (\$450,000) (Spreadsheet, line 21); and (b) an additional \$200,000 as a holdback for projected costs post-12/3/97 (Spreadsheet, line 22), raising the total holdback for such costs to \$500,000, as described above (Spreadsheet, line 36). Thus, the amount available for distribution to the two states from the Continental settlement is \$1,600,000 (Spreadsheet, line 24).

B. Amounts Payable to Charles R. McCormick III.

As to the settlement with Continental, the portion payable to Mr. McCormick is \$250,000 (Spreadsheet, line 20), which is solely to pay the costs of defending any Claims, as defined in the settlement agreement. Of this settlement amount,

Margarita Padilla
California Department of Justice
Larry Edelman
Oregon Department of Justice
January 5, 1999
Page 5

HELLER EHRMAN WHITE & MCAULIFFE

ATTORNEYS

20% (\$50,000) is paid to Heller Ehrman (Spreadsheet, line 21), pursuant to the Fee Agreement. The \$200,000 remainder will be disbursed into a trust account, pursuant to the terms of the settlement agreement (Spreadsheet, line 23).

Proposed Distribution to California and Oregon

The overall accounting and distribution of the three settlements to date is summarized on sheet 3 of the Spreadsheet. In total, the amount available from settlement with the three carriers discussed above for immediate distribution to the two states is \$2,305,476 (Spreadsheet, line 38). We propose to distribute 50% of that amount to each of the two states as follows:

1. On behalf of the California DTSC, \$1,152,738 shall be deposited in account number 0404700-478 at U.S. Bank (Trust Account B) or, if that account has been closed, in account number 0404700-361 (Trust Account A).
2. On behalf of the Oregon Department of Environmental Quality, we do not have instructions for payment. We will deposit \$1,152,738, per written instructions from an authorized representative of the DEQ.

If the above accounting meets with your approval, please initial in the indicated place below and return this letter to me by fax. As soon as we have received responses, we will forward funds pursuant to this letter.

In addition, please be advised that we have reached a settlement (subject to final documentation) with Hartford Insurance Co. for a total of \$1,200,000 payable to McCormick & Baxter. Hartford has indicated that it will not require an individual release from Mr. McCormick. If that changes, and Hartford does require a personal release, two separate funds will be utilized, as with the three settlements to date. In addition, we are hopeful that we will achieve a settlement with the London insurers in the range of \$1,200,000 in total.

At such time as we may receive payments under such settlements, we will provide a similar written accounting of proposed distribution of such payments.

Margarita Padilla
California Department of Justice
Larry Edelman
Oregon Department of Justice
January 5, 1999
Page 6

HELLER EHRMAN WHITE & MCAULIFFE

ATTORNEYS

This would then leave significant remaining unsettled claims against Gulf Insurance Co. and St. Paul Fire & Marine. At this point, we are engaged in settlement discussions with both carriers. However, it is impossible to predict how those discussions will proceed.

If you have any questions or comments about the above, please contact me or Jon Hayden to discuss the same.

Very truly yours,


Barry S. Levin

Attachment and enclosures

cc: Charles R. McCormick III, w/ Attachment
Jonathan P. Hayden, w/ Attachment

SO APPROVED:

State of California
Department of Toxic Substances Control

By: _____

Dated: _____

Oregon Department of Environmental Quality

By: _____

Dated: _____

St. Paul v. McCormick Baxter Creosoting Co.**Accounting for Recoveries to Date**

January 5, 1998

(To Be Read Together With January 5, 1998 Letter to Padilla and Edelman)

	A	B	C	D	E	F	G
1	CARRIER	TOTAL SETTLEMENT	PAYABLE TO M&B	PAYABLE TO C.R. MCCORMICK	PAYABLE TO HEWM FEES	PAYABLE TO HEWM COSTS	AVAIL. FOR IMMED. DISTRIB. TO AGENCIES
2	Consolidated American	\$875,000	\$785,000	\$90,000			
3	American Star	\$1,250,000	\$1,125,000	\$125,000			
4	Total	\$2,125,000	\$1,910,000	\$215,000			
5	Less First \$160,000 (per Fee Agreement)		-\$160,000		\$160,000		
6	Subtotal		\$1,750,000				
7	Less 20% Fee to HEWM (per Fee Agr)		-\$350,000	-\$43,000	\$393,000		
8	Less unreimbursed costs incurred by HEWM 7/1/81 to 12/3/97 (per Fee Agr)		-\$276,272			\$276,272	
9	Subtotal		\$1,123,728				
10	Less Holdback for Costs Projected Post-12/3/97*		-\$300,000				
11	Less Holdback for Costs Paid by M&B btwn 11/90 and 6/81*		-\$118,251				
12	Amount From ConAm & AmSt Held for C. R. McCormick III Defense			\$172,000			
13	Net Avail. from ConAm & AmSt for Immed. Distribution to Agencies		\$705,476				\$705,476
14							
15		NOTE to Lines 10, 22 - These represent holdbacks, to be deposited in a trust account, of the approximately					
16		\$500,000 in costs likely to be incurred in taking this matter through trial.					
17		NOTE to Line 11 - This amount reimburses M&B for costs incurred					
18		after confirmation of the Reorganization Plan, and reimbursed to HEWM by M&B pursuant to the Fee Agreement.					

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JAN-20-98 TUE 14:50

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FAX NO. 2065537176

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St. Paul v. McCormick Baxter Creosoting Co.**Accounting for Recoveries to Date**

January 5, 1998

(To Be Read Together With January 5, 1998 Letter to Padilla and Edelman)

	A	B	C	D	E	F	G
19	CARRIER	TOTAL SETTLEMENT	PAYABLE TO M&B	PAYABLE TO C.R. McCORMICK	PAYABLE TO HEWM (FEES)	PAYABLE TO HEWM (COSTS)	AVAIL. FOR IMMED. DISTRIB. TO AGENCIES
20	Continental Ins. Co.	\$2,500,000	\$2,250,000	\$250,000			
21	Less 20% Fee to HEWM (per Fee Agr.)		-\$450,000	-\$50,000	\$500,000		
22	Less Holdback for Costs Projected Post-12/3/97*		-\$200,000				
23	Amount from Contl. Held for C. R. McCormick III Defense			\$200,000			
24	Net Avail. from Contl. for Immediate Distrib. to Agencies		\$1,600,000				\$1,600,000
25							
26							
27							
28							

St. Paul v. McCormick Baxter Creosoting Co.

Accounting for Recoveries to Date

January 5, 1998

(To Be Read Together With January 5, 1998 Letter to Padilla and Edelman)

	A	B	C	D	E	F	G
	GRAND TOTALS, 3	TOTAL	PAYABLE	PAYABLE TO C.R.	PAYABLE TO	PAYABLE TO	AVAIL. FOR IMMED.
29	SETTLEMENTS	SETTLEMENTS	TO M&B	McCORMICK	HEWM (FEES)	HEWM (COSTS)	DISTRIB. TO AGENCIES
30	Total 3 Settlements	\$4,525,000					
31	Total Payable to M&B		\$4,160,000				
	Total Payable to C.R.						
32	McCormick III			\$465,000			
	Total Fees Payable to						
33	HEWM				\$1,053,000		
	Total Costs						
34	Reimbursable to HEWM					\$276,272	
	Total Reimbursable to						
	M&B for Costs Paid						
35	11/90 to 7/91		\$118,251				
	Total Holdback for						
	Projected Post-12/3/91						
36	Costs		\$500,000				
	Total Held for CRM III						
37	Defense			\$372,000			
	Total Available for						
38	Immediate Distribution						\$2,305,476
	to Agencies						



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
— 1200 Sixth Avenue
Seattle, Washington 98101

OFFICE OF REGIONAL COUNSEL

Mail Stop ORC-158
Phone Number (206) 553-1037
Fax Number (206) 553-0163

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Al Goodman

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Ted Yekeler

This transmission consists of 11 page(s) including this cover page.

ADDITIONAL MESSAGE:

Info on M + B ms. settlement

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